EDITOR'S NOTE

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PHILLIP LEIGH,

Petitioner,

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

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NO. 87-5803

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

PHILLIP LEKAS,

Petitioner

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

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QUESTION PRESENTED FOR REVIEW

Whether an in-custody statement given 12 hours after petitioner was taken into custody, after petitioner had repeatedly been advised of his Miranda rights and after petitioner had been confronted with incriminating information sufficient to establish probable cause for his arrest, which was garnered independently of anything obtained subsequent or pursuant to petitioner's detention was properly admitted under the attenuation doctrine of Brown v. Illinois.

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RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

Petitioner was convicted of murder, armed robbery and aggravated arson in the Circuit Court of Cook County, Illinois. (R. 2341) Petitioner's murder and armed robbery convictions were affirmed in an opinion dated March 17, 1987, by the First District Appellate Court of Illinois. People v. Lekas, ___ Ill. App. 3d ___, 508 N.E.2d 221 (1st Dist. 1987). This opinion affirmed the circuit court's denial of petitioner's motions to quash his arrest and suppress his statements. (See Petitioner's Appendix A.) The Illinois Supreme Court entered an order on October 7, 1987, denying leave to appeal. (See Petitioner's Appendix B.)

JURISDICTION

The jurisdictional requisites have been set forth in the Petition for a Writ of Certiorari. However, as treated more fully within the following argument, the respondent believes that petitioner has failed to show any good reason for this Court to exercise jurisdiction to review the judgment in question by writ of certiorari.

STATEMENT OF THE CASE

Petitioner Phillip Lekas was convicted of murder, armed robbery and aggravated arson stemming from the shooting death of Helen Samp on August 20, 1982. (R. 2341) The incident occurred between 11 a.m. and 2 p.m. in the home of Samp's son-in-law Leo Russell, at which time Leo was bowling with George Lekas, petitioner's brother. (R. 140) On August 31, 1982, at approximately 10 a.m., police officers spoke with Leo who explained that the bowling engagement had been arranged at George's insistence and who voiced his suspicions about George and his two brothers, Phillip and Christopher.

A background check of the three Lekas brothers revealed that they were all known to the Burbank, Illinois, Police Department since they had committed numerous burglaries and thefts and their modus operandi was to victimize their friends and neighbors. (R. 169-170) That evening, at approximately 7 p.m., George was brought to the police station for questioning regarding the Samp homicide. (R. 9-10, 172-173) Several hours later George revealed that Phillip and Christopher knew of George's pending bowling date with Leo, both had made numerous inquiries regarding the length of time of the bowling date, both were cronic drug abusers in constant need of money and both had talked in the past about stealing Leo's coin collection. (R. 182)

Phillip was arrested without a warrant at his father's home between 3 and 5 a.m. on September 1, 1982. (R. 150-153) Sometime between 9 and 10 a.m. Phillip spoke with several officers, but made no admissions. (R. 276-277) At approximately 11:30 a.m. George, who also was in custody, revealed that on August 30 Christopher told him that he and Phillip "had ripped off Leo", that Christopher shot the victim once in the temple after she had been tied up, and that the two of them had taken the proceeds to the Clayton Motel, Room Number 9. (R. 187-189) George himself had seen the proceeds at the motel the day after Helen Samp was slain. (R. 189) Several officers then went to the motel, spoke with two people who worked there, discovered that the room had been registered to "Christopher Lekas" and received positive identifications of Christopher and George and a tentative identification of Phillip as visitors to the room. (R. 190-192)

Upon returning to the police station, the officers confronted Phillip with the facts they had obtained up to that point in their investigation. (R. 477) Phillip gave a statement to the officers implicating himself and Christopher at approximately 1 p.m. (R. 192-193, 479) After an Assistant State's Attorney was summoned, Phillip gave an oral statement, at approximately 3:30 p.m., and a written statement, at 5:14 p.m., implicating himself and Christopher in the robbery and death of Helen Samp. (R. 381, 512)

Phillip's pre-trial motions to quash his arrest and suppress his statements were denied. (R. 370, 992) The circuit court ruled that there was probable cause to arrest Phillip at the time he was originally taken into custody and, alternatively, that independent facts subsequently learned by the officers while Phillip was in custody gave the officers probable cause to arrest him. (R. 365-367) The circuit court also ruled that Phillip's statements were voluntarily made. (R. 992)

The First District Appellate Court of Illinois addressed petitioner's contention that there was no probable cause to arrest him and, therefore, his statements should have been suppressed as the tainted by-products of his unlawful arrest. In affirming petitioner's conviction, the Illinois Appellate Court upheld the circuit court's conclusion that his statements were admissible since they were purged of any taint of any possible illegality of his arrest. People v. Lekas, ___ Ill. App. 3d ___, 508 N.E.2d 221, 237 (1st Dist. 1987). In light of Brown v. Illinois, 422 U.S. 590 (1975), the appellate court found that 12 hours had elapsed between the time Phillip was taken into custody and the time he made his recorded statement, each time Phillip was questioned by the police he was advised of his Miranda rights and, most importantly, Phillip was confronted with untainted new information before he voluntarily confessed to the instant crime. 508 N.E.2d at 237-238. The new information consisted of the results of the follow-up investigation at the Clayton Motel, an investigation which was not prompted by anything Phillip said, nor the fruits of his arrest. Id. at 237. The Illinois Supreme Court denied leave to appeal. (See Petitioner's Appendix B.)

REASON FOR DENYING THE WRIT

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED SINCE THE ILLINOIS APPELLATE COURT GAVE FULL CONSIDERATION TO THE QUESTION PETITIONER SEEKS TO HAVE REVIEWED AND DECIDED IT CORRECTLY BASED ON THE ATTENUATION DOCTRINE ENUNCIATED BY THIS COURT IN BROWN V. ILLINOIS AND BASED ON THE FACTS INVOLVED IN PETITIONER'S CASE WHICH, INDEPENDENT OF HIS DETENTION, ESTABLISHED PROBABLE CAUSE FOR HIS ARREST PRIOR TO THE RENDERING OF HIS RECORDED STATEMENT.

This Court first articulated the attenuation doctrine in Brown v. Illinois, 422 U.S. 590 (1975). Faced with determining whether a petitioner's in-custody statements should have been excluded as the fruit of his illegal arrest, this Court turned to its decision in Wong Sun v. U.S., 371 U.S. 471 (1963), and reviewed the purpose of the exlcusionary rule. 422 U.S. at 599. The exclusionary rule protects Fourth Amendment guarantees by deterring lawless conduct of federal officers and by closing the doors of the courts to any use of evidence obtained unconstitutionally. Id., quoting Wong Sun, 371 U.S. 471, 486 (1963). The Wong Sun Court stated:

> We need not hold all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint. (Citation omitted.) 371 U.S. at 486.

In light of these principles, the Brown Court held:

> The question of whether a confession is the product of a free will under Wong Sun must be

> answered on the facts of each case. No single fact is dispositive... The Miranda warnings are an important factor, to be sure, in determining whether the confession is obtained by exploitation of an illegal arrest. But they are not the only factor to be considered. The temporal proximity of the arrest and the confession, the presence of intervening circumstances, (citation), and particularly, the purpose and flagrancy of the official misconduct are all relevant. (citation) 422 U.S. at 603-604.

The First District Appellate Court of Illinois rejected the instant petitioner's claim that his in-custody statement should have been suppressed by holding, pursuant to Brown v. Illinois, that petitioner's statement was sufficiently attenuated from his arrest to have been the independent product of his free will. People v. Lekas, ___ Ill. App. 3d ___, 508 N.E.2d 221 (1st Dist. 1987). The appellate court refused to decide whether the circuit court's determination that the police had probable cause to arrest petitioner when he was initially taken into custody was manifestly erroneous because, based on the facts of the case, it was apparent that the taint, if any, from any possible illegality of petitioner's arrest had been dissipated by the time the inculpatory, recorded statement was made. 509 N.E.2d at 235.

The appellate court found that the attenuation doctrine had been satisfied because the statement was made almost 12 hours after the petitioner was taken into custody, during which time petitioner was repeatedly advised of his Miranda rights. Id. at 237-238. Additionally, and most importantly, petitioner was confronted with new information obtained by the police before he confessed. Id. at 237. This information was obtained after a follow-up investigation was made into a statement made petitioner's brother George. Id. George told the police that Christopher and Phillip "had ripped

off Leo" and had taken the proceeds to the Clayton Motel, Room Number 9. Id. at 225. George also told the police he had seen the proceeds from the crime at the motel. Id. The police went to the Clayton Motel where a desk clerk identified Phillip and Christopher as having recently been there with George, just as George had described. Id.

The appellate court intimated, and the People maintain, that the information received pursuant to the investigation at the Clayton Motel, combined with the other facts known to the police from their investigation into the Samp homicide and George Lekas' statements, established probable cause to believe that a crime had been committed and that Phillip Lekas, at least in part, had committed it. Id. at 237. Thus, there was probable cause to justify Phillip's detention at the time he confessed. The appellate court emphasized that the new information had been obtained by the police independent of Phillip's detention since George's statement was not the "fruit" of Phillip's arrest and there was no indication from the facts of the case that the investigation at the motel was prompted by anything Phillip said. Id.

What constitutes an intervening circumstance sufficient to purge the taint of an illegal arrest has never been defined by this Court; rather, it is a determination which must be based upon the particular facts of each case. In Wong Sun, this Court found that evidence that the defendant had been released from custody after his arraignment and had returned several days later to make a statement established that the connection between the arrest and the statement "had become so attenuated as to dissipate the taint." Wong Sun, 371 U.S. 471, 491 (1963), quoting Nardone v. U.S., 308 U.S. 338, 341, (1939). The Nardone Court explained that:

> "If knowledge of them [facts] is gained from an independent source they may be proved like any others, but the knowledge gained by the Govern-

> ment's own wrong cannot be used by it "simply because it is used derivatively. (citation) *** The burden is, of course, on the accused in the first instance to prove to the trial court's satisfaction that the wire-tapping was unlawfully employed... This leaves ample opportunity to the Government to convince the trial court that its proof had an independent origin. (Emphasis added.) 308 U.S. at 341.

The Illinois Court of Appeals' decision that the new information, obtained pursuant to an investigation into George Lekas' statement, had a sufficiently independent origin such that when confronted with it the petitioner chose to confess is therefore completely in accord with this Court's prior rulings on what constitutes an intervening circumstance sufficient to purge the taint of an unlawful arrest.

The question petitioner presents to this Court revolves entirely on the facts of this case and the application of the Brown v. Illinois attenuation doctrine to these facts. Despite petitioner's claims to the contrary, there is no indication that the opinion of the First District Appellate Court of Illinois is in conflict with any decisions rendered on this topic by this Court. Petitioner wishes this Court to expend its valuable resources to examine an issue which can only be resolved by analyzing the specific facts peculiar to his case to determine whether the attenuation doctrine has been satisfied. This type of review has already been engaged in by the appellate court. As Justice Holmes once observed, "[W]e do not grant a certiorari to review evidence and discuss specific facts." U.S. v. Johnson, 268 U.S. 220, 227 (1975). The instant petition for certiorari should be denied.

CONCLUSION

WHEREFORE, for all the foregoing reasons, the respondent respectfully prays that this Honorable Court deny the instant petition for a writ of certiorari.

Respectfully submitted,

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